BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Stewart A. Taylor Dist. 9, Map 54A, Group C, Control Map 54A, Parcel 1.00, S.I. 000 Tax Years 2004 through 2006	)) Washington County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently subclassified commercially and valued as follows:

TAX YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2004	$2,996,900	$225,700	$3,222,600	$1,289,040
2005	$2,996,900	$ 36,500	$3,033,400	$1,213,360
2006	$2,996,900	$ 0	$2,996,900	$1,198,760

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on August 30, 2006 in Johnson City, Tennessee. The taxpayer and property owner, Stewart A. Taylor, was represented by T. Arthur Scott, Esq. The assessor of property, Monty Treadway, was represented by his chief deputy, John Sims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Pertinent Facts

Subject property consists of an 8.6 acre tract of land located at the southwest corner of the State of Franklin Road and West Market Street in Johnson City, Tennessee. Subject property was improved with a TVA customer service center until its demolition on or about January 27, 2005. The customer service center included an office building with an adjacent garage and warehouse.

The parties agreed to the following stipulations of fact:

1. The property was acquired by Stewart Taylor at auction from the Tennessee Valley Authority (United States of America) ("TVA") December 31, 2003 for the sum of $3,110,000.

2. Only one other bid was made at the TVA auction and that was $3,100,000 by the City of Johnson City.

3. The City of Johnson City is not bound by zoning and, in fact, can change the zoning of its own property as it desires.

4. In deciding to bid on the property, the Johnson City City Commission discussed using some of the property as a park.

5. The property at the time of its acquisition was zoned R-4 by the City of Johnson City, Tennessee.

6. As a governmental entity, TVA is not bound by zoning.

7. While TVA owned the property, a group led by Mountain States Health Alliance ("MSHA") contracted to buy the property, contingent on a zoning change to MS-1.

8. The zoning change to MS-1 requested by the MSHA group was rejected by the Johnson City City Commission, which was upheld on appeal to Chancery Court.

9. The terms of the TVA auction included a requirement for a one year lease at $100,000 rent, with the developer bearing costs of insurance and taxes.

10. The terms of the TVA auction included no contingency for rezoning.

11. The Comprehensive Land Use Plan for Johnson City at the time of the purchase identified the property to be later zoned RTP (Research Technology Park).

12. The improvements on the property were removed on or about January 27, 2005.

13. No rent for the property has been paid to the owner since 2004.

14. The City of Johnson City has failed to issue a building permit as requested by Stewart Taylor for R-4 development.

15. The Johnson City City Commission denied the rezoning request for PB on November 17, 2005.

16. The Johnson City City Commission on November 17, 2005 directed the Planning Staff to recommend a zoning for the property.

17. On December 13, 2005, the Johnson City Planning Commission rejected the Planning Staff recommendation for a RTP zoning.

18. On January 5, 2006, the City Commission voted on first reading to zone the property RTP.

19. As of August 30, 2006, the property remains R-4 zoned.

II. Contentions of the Parties

The taxpayer contended that subject property should be subclassified and valued as follows:

Tax Year	Subclassification	Value
2004	Commercial	$170,000
2005	Residential	$430,000
2006	Residential	$475,000

In support of this position, the testimony and appraisal reports of David W. Harris, MAI were entered into evidence.[1] Mr. Harris summarized the basic assumptions applicable to each appraisal report in a letter of transmittal to Gary Keys dated April 12, 2004 which provided in relevant part as follows:

> Attached is an appraisal of the referenced land, effective April 4, 2004, the last date of inspection. This property is exceptionally well located in the southwest corner of the intersection of West Market and State of Franklin, in Johnson City. It is improved with the T.V.A. customer service center and attached warehouse. However T.V.A. has reported they will vacate these premises within the next year and the buildings are scheduled for demolition. These buildings and other improvements to the property are not included in this appraisal.
>
> This property is currently zoned R-4; Residential Use. The obvious best use of the land is for highway commercial development. However the land has not been rezoned for commercial use and this appraisal is based on the assumption the existing residential zoning will not be changed. . . .
>
> In the event this land is rezoned for commercial development there will be a significant change in value.

The effective dates of Mr. Harris' other appraisal reports were January 1, 2005 and January 1, 2006.

In each case, Mr. Harris' conclusions of value were based upon an analysis of comparable sales. Mr. Harris included the following language in each report in explaining his various conclusions of value:

> The obvious best use of the subject land is for highway commercial development. However, assuming restriction to residential development its value is greatly reduced as indicated by the foregoing residential land sales. . . .

With respect to the issue of subclassification, the taxpayer argued that his purchase was speculative insofar as he hoped to develop the property commercially. Given the fact that the City of Johnson City has yet to rezone subject property, the taxpayer asserted that its most suitable economic use on January 1, 2005 and January 1, 2006 was for residential development. The taxpayer did not contest the commercial subclassification for tax year 2004 because of the income generated by the lease with TVA.

The assessor of property summarized his position in collective exhibit #8 which provided in pertinent part as follows:

> The assessor's office is of the opinion the highest and best use for this property is for commercial development. Zoning alone may not be the highest contributing factor in determining market value

[1] Mr. Harris prepared a separate appraisal report for each tax year.

> of this property. The location and the best use and the purchase price would be the best indicators of market value. . . .
>
> On the day of the auction the city of Johnson City's finale [sic] bid was $3,110,000, [sic] Mr. Taylor's bid of $3,110,000 was the winning bid. The appraised value by the assessor's office of $2,996,900.00 for the land is reflective of the purchase price. It is the opinion of the assessor's office the purchase price establishes market value. . . .

In addition to the foregoing, Mr. Sims testified that the current land appraisal equated to $8.00 per square foot which is consistent with the valuation of a shopping center located across the street from subject property. Finally, Mr. Sims explained that the valuation of subject improvements was derived from the State of Tennessee Computer-Assisted Appraisal System.[2]

III. Analysis

Since the taxpayer is appealing from the determination of the Washington County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

A. Tax Year 2004

As previously indicated, the taxpayer did not contest the appropriateness of a commercial subclassification for this particular tax year. Thus, the only issue before the administrative judge for tax year 2004 concerns value.

For ad valorem tax purposes, the basis of valuation is set forth in Tenn. Code Ann. § 67-5-601 which provides in pertinent part as follows:

> (a) The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . .
>
> (b) It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.
>
> * * *

[2] This system is commonly referred to by the acronym "CAAS".

In addition, Tenn. Code Ann. § 67-5-602(b) provides as follows:

> For determining the value of real property, such manuals shall provide for consideration of the following factors:
>
> (1) Location;
> (2) Current use;
> (3) Whether income bearing or non-income bearing;
> (4) Zoning restrictions on use;
> (5) Legal restrictions on use;
> (6) Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
> (7) Inundated wetlands;
> (8) Natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land. As used in this subdivision (b)(8), "crops" includes trees; and
> (9) All other factors and evidence of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

As the administrative judge noted at the hearing, the State of Tennessee Assessment Manual approved by the State Board of Equalization on November 1, 1972 is generally recognized as the manual being referred to in the above statutes.

Respectfully, the administrative judge finds that Mr. Harris' appraisal cannot be adopted as the basis of valuation for this particular tax year. The administrative judge finds that January 1, 2004 constituted the relevant assessment date pursuant to Tenn. Code Ann § 67-5-504(a). The administrative judge finds that Mr. Harris appraised subject property as of April 4, 2004.

The administrative judge finds that the instant case involves one of those relatively rare situations where an appraisal made as of January 1, 2004 would result in a significantly higher conclusion of value than one made as of April 4, 2004. In particular, Mr. Harris testified that on January 1, 2004 he was not aware of the fact that TVA had indicated it would vacate the premises within the next year and demolish the buildings. The administrative judge finds Mr. Harris conceded that his conclusion of value would have been much higher on January 1, 2004 because he would have considered the income stream from the lease with TVA. Indeed, Mr. Harris stated that he would not have normally restricted his appraisal to residential use based upon the facts known to him on January 1, 2004. The administrative judge finds that events occurring after the assessment date are not normally relevant for that tax year. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of

showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

Interestingly, the appeal form filed with the State Board of Equalization on September 7, 2004 for tax year 2004 asserts a value of $900,000 based upon the lease income paid by TVA. The appeal form was signed by Mr. Taylor. Mr. Taylor was not present at the hearing.

B. Tax Years 2005 and 2006

The administrative judge finds that in this case the value of subject property for ad valorem tax purposes is effectively a function of its subclassification. The administrative judge finds that the subclassification issue, in turn, depends on the resolution of two issues. First, was the taxpayer's purchase of subject property on December 30, 2003 for $3,110,000 a speculative purchase? Second, should the assessor be precluded from subclassifying subject property commercially because the taxpayer has not yet succeeded in obtaining commercial zoning?

The administrative judge finds that in the various appeal forms he signed, Mr. Taylor characterized his purchase as "highly speculative" because it was "based on potential commercial development." Respectfully, the administrative judge finds that such an assertion standing alone does not establish that the purchase was "speculative" within the meaning of Tenn. Code Ann. § 67-5-601(a). The administrative judge finds Mr. Taylor was not present to testify or undergo cross-examination and no testimony was offered from anybody with personal knowledge of the transaction. Absent such additional evidence, the administrative judge finds it inappropriate to conclude that Mr. Taylor's purchase of subject property was "speculative" within the meaning of Tenn. Code Ann. § 67-5-601(a).

Even assuming arguendo that Mr. Taylor's purchase was speculative, the critical inquiry concerns whether a residential or commercial subclassification is more appropriate under Tenn. Code Ann. § 67-5-801(c) which provides as follows:[3]

> (1) All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:
>
> (A) Immediate prior use, if any;
> (B) Location;
> (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property;
> (D) Other legal restrictions on use;
> (E) Availability of water, electricity, gas, sewers, street lighting, and public services;

[3] The administrative judge finds that subject property was being held for use on January 1, 2005 and vacant on January 1, 2005.

(F) Size;
(G) Access to public thoroughfares; and
(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.

The administrative judge finds that except for the fact subject property is currently zoned residentially, none of the factors enumerated above militate in favor of a residential subclassification. The administrative judge finds the fact the taxpayer has not yet succeeded in obtaining a zoning change does not foreclose a commercial subclassification. The administrative judge finds that reasonably anticipated zoning changes often "drag out" for several years. Indeed, the stipulations of fact indicate that the request for PB (Planned Business) zoning was not even denied until November 17, 2005. See stipulation #15. Moreover, on January 5, 2006 the City Commission voted on first reading to zone the property RTP (Research Technology Park). See stipulation #18. Thus, on January 1, 2006, commercial rezoning was still being actively considered by the City of Johnson City.

The administrative judge finds that for purposes of subclassification zoning should be considered in the same manner as in a highest and best use analysis. The administrative judge finds that the Appraisal Institute addresses this issue as follows:

> . . . The appropriateness of current zoning and the reasonable probability of a zoning change must be considered. Highest and best use recommendations may rely on the probability that such a change will occur. The appraiser may interview planning and zoning staff and study patterns of zoning change to assess the likelihood of a change. The appraiser can generally eliminate those uses that are clearly not compatible with existing uses in the area as well as uses that have previously been denied. After reviewing available public and private land use information, the appraiser may also prepare a forecast of land development for the area. If the zoning of the subject site is not compatible with the probable forecast uses, the likelihood of a change in the zoning is especially high and speculative. The appraiser should recognize, however, that a zoning change is never 100% certain and should alert the client to that fact if it is relevant to the purpose of the appraisal.

Appraisal Institute, *The Appraisal of Real Estate* at 194-95 (12th ed. 2001).

The administrative judge finds Mr. Harris testified he was instructed to assume that the existing residential zoning will not be changed. The administrative judge finds Mr. Harris did not reach this conclusion after conducting his own highest and best use analysis. The administrative judge finds that the taxpayer simply introduced no evidence concerning the probability that commercial zoning will or will not ultimately be approved. Absent such

proof, the administrative judge finds that the preponderance of the evidence supports the conclusion that on the relevant assessment dates commercial rezoning could reasonably be assumed.

Given the foregoing, the administrative judge finds that the assessor properly subclassified subject property commercially for tax years 2005 and 2006. The administrative judge finds that since Mr. Harris assumed residential use constituted the highest and best use on the relevant assessment dates, his conclusions of value cannot provide a basis of valuation. Accordingly, the administrative judge finds that the current appraisals of subject property for tax years 2005 and 2006 must be affirmed based upon the presumptions of correctness attaching to the decisions of the Washington County Board of Equalization.

In concluding that subject property should remain subclassified commercially, the administrative judge finds one component of Mr. Sims' testimony perplexing. The administrative judge finds Mr. Sims testified that it is "office policy" to subclassify unused property (and presumably held property) residentially even when commercial use constitutes the immediate most suitable economic use. The administrative judge finds Mr. Sims stated that the decision to retain subject property's commercial subclassification was made by Mr. Treadway. Unfortunately, Mr. Treadway was not present to testify. Absent additional proof, the administrative judge cannot reach any conclusions other than the fact the subject property has been subclassified commercially in accordance with Tennessee law.

ORDER

It is therefore ORDERED that subject property be subclassified commercially and the following values and assessments are hereby adopted for tax years 2004 through 2006:

TAX YEAR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2004	$2,996,900	$225,700	$3,222,600	$1,289,040
2005	$2,996,900	$ 36,500	$3,033,400	$1,213,360
2006	$2,996,900	$ 0	$2,996,900	$1,198,760

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12

of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of September, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: T. Arthur Scott, Esq.
Monty Treadway, Assessor of Property